# **Committee on Superior Court**

## **MINUTES**

Friday, November 21, 2003 10:00 a.m. to 3:00 p.m. State Courts Building 1501 W. Washington Conference Room 119A & B Phoenix, AZ

## **MEMBERS PRESENT**

Honorable Silvia Arellano
Mr. K. Kent Batty
Honorable James E. Chavez
Honorable Norman J. Davis
Honorable Pat Escher
Honorable Charles V. Harrington
Honorable R. Douglas Holt
Honorable Michael K. Jeanes

Honorable Kirby Kongable

Mr. Gary Krcmarik
Mr. Marty Krizay
Honorable Denise I. Lundin
Honorable Stephen F. McCarville
Honorable Leslie Miller
Honorable Fred Newton, Chair
Honorable Emmet J. Ronan

Honorable James A. Soto

#### **GUESTS**

Mr. David Benton
Ms. Page Gonzales
Ms. Kathy Waters
Ms. Dori Ege
Mr. Ted Wilson
Dr. Melanie Sturgeon

Ms. Konnie Young Mr. Robert Roll Ms. Sue Latzko Ms. Jennifer Green Mr. Greg Eades

The November 21, 2003, meeting of the Committee on Superior Court was called to order by Judge Fred Newton, Chair, at 10:15 a.m. A quorum was present.

## **APPROVAL OF MINUTES FROM OCTOBER 3, 2003**

MOTION: Judge Arellano moved to approve the minutes of October 3, 2003. Seconded. Passed unanimously. COSC-03-019

## **LEGISLATIVE UPDATE**

Mr. David Benton and Ms. Page Gonzales presented an update on the judiciary's legislative package. The following proposals were adopted as presented by AJC, except as noted.

- Property Tax Appeal Time Limit.
- Mental Health Experts

Amended striking the language requiring a "psychiatrist", and using "mental health expert". Details to be hammered out by rule change petition being worked on by Judge Ballinger, Superior Court in Maricopa County, and Peter Kiefer, Criminal Court Administrator - Maricopa.

- Preparatory Release for Inmates Sentenced to Probation
   Adding juvenile cases to the proposal is being explored.
- Forcible Entry and Detainer
- Small Claims Hearing Officers
- Drug Court Funding

With the strategy to look for alternatives to a general fund appropriation

MVD Registration Holds

With a caveat that the proposal may need to be scaled back later in the legislative session. Note: This committee's recommendation to not include the proposal in the legislative package unless amended to address concerns regarding multiple parties on registrations were considered, but not adopted by AJC.

<u>TIP on Probation Absconder Location</u>

Ms. Gonzalez also presented a special session update. The special session convened October 20, 2003.

## **Judicial Collections**

The bill repealing judicial collections on June 30, 2004 was signed by Governor on October 23, 2003.

## Prison Overcrowding

- Creates a DUI assessment of \$1,000 on water craft, vehicle, air craft and DUI convictions. The assessment is excluded from surcharges.
- Directs the assessment monies into a prison overcrowding fund. The funds will be used pay for cost related to prison overcrowding and Department of Corrections (DOC) support and maintenance.
- Establishes a base fine for water craft DUI of no less than \$250 and a base fine for aggravated water craft DUI of no less than \$750.
- Amended to prohibit the waiver of the fines, surcharges and assessments for the DUI convictions listed in the bill.
- Amended to remove emergency clause.
- Amended to allow treatment at DOC.

Concerns were raised about pricing the offender out of being able to pay.

#### CPS

Initially two bills; one from the Governor and the other from Rick Romley, Maricopa County Attorney were dropped.

#### Differences

- The Governor's bill asks for \$35M; \$27M to keep CPS running, \$8M for additional case workers, increased payments to foster parents and open hearings in a rural county as being piloted in Maricopa County.
- Rick Romley's bill creates CPS as their own agency and opens all records.

#### Common Themes

- In-home intervention.
- Joint investigations.
- Definition of CPS and abuse and neglect.
- Jury trials for termination of parental rights.

Later the House and Senate dropped their own bills.

- The House (Children's Caucus) bill follows the Governor's bill more closely, but did not include any funding, and passed out of committee.
- The Senator Bennett's bill has passed out of the Appropriations Committee with \$7.5M in funding.
- The House and Senate bills have been amended to include penalties for false reporting.

Concern was raised about the severe and significant impact that any of these bills will have on the courts centering on in-home intervention and joint investigations.

Judge Newton pointed out the Juvenile Centers do no have "jury facilities."

Additionally, concern was raised regarding the envisioned process and the inherent delays in resolution and its impact on children and families.

## **ACJA § 6-207 - UNIFORM CONDITIONS OF PROBATION**

In addition to the meeting materials distributed to the members via the COSC web site, Ms. Kathy Waters provided a version of ACJA § 6-207, dated 11/21/03.

Ms. Waters presented the revisions made to existing ACJA § 6-207 and the associated form.

Form updates include: (Standard conditions - left side, Special conditions - right side)

- Adds check box for "upon release from prison for felony DUI ( mo. days credit)"
- Adds choice of 24, 48 or 72 hours to report to law enforcement in #8.
- Financial orders became a standard condition becoming #11.
- Employment/School became a special condition in #17.
- Modifies #12 to include a county/state selection.
- Adds a DUI Court check box.

## Code updates include:

- Specifies the uniform conditions for Superior Court supervised cases.
- Specifies the uniform condition for limited jurisdiction court adult probationers referred to the Superior Court for supervision.
- Mandates use of the adopted form for Superior Court.
- Specifies use of the adopted form in limited jurisdiction courts.
- Addresses judicial discretion and allows for changes to be documented on the form.
- Eliminates subsection of the code requiring the code to be modified every year.

#### Comments:

- Make form compliant with Rule 10(d) regarding scanning process used in the clerk's office.
- Add "Form modified pursuant to 3.B." to the end of D.2.B. of the code section.
- Add "Form modified pursuant to 3.C." to the end of D.2.C. of the code section.
- Specify which forms should be duplicated in 3.B.
- Make #17 employment/school a standard condition and remove the check box and renumber as 16

MOTION: Judge Miller moved to accept ACJA § 6-207 as proposed with an amendment to the form to make #17 a standard condition and renumber as 16. Seconded.

AMENDED MOTION: To accept the ACJA § 6-207 with an amendment to the form to make #17 a standard condition and renumber as 16 and to comply with formatting requirements for Superior Court forms. Seconded. Passed unanimously. COSC-03-020

## ACJA § 6-211 - INTERCOUNTY COURTESY TRANSFERS FOR ADULT PROBATIONERS

ACJA § 6-211, having been approved by COP and reviewed by the chief probation officers and LJC, was presented to the members by Ms. Dori (Littler) Ege.

#### Concerns:

- Point of clarification Does "in accordance with caseload capacities" in 3.E.2. mean if County A is full, they don't have to accept a transfer from County B? Yes.
- In reference to G.4., the code does not specify that the written reply from the receiving county must indicate whether they are approving or refusing.
- Affect of proposed changed to Rule 27.1.

MOTION: Judge Arellano moved to approve ACJA § 6-211 as proposed. Seconded. Passed unanimously. COSC-03-021

## RECORDS RETENTION SCHEDULE FOR SUPERIOR COURT

Mr. Ted Wilson distributed updated copies of the Records Retention Schedule for the Superior Court. The overall goal of the update was to not only conform them to changes in statute, but to change the general philosophy that "all Superior Court records are kept forever" to a more rational approach. He briefly reviewed the changes and asked for comments.

## Comments:

- Retaining court reporter notes in a criminal (non-capital) case for 10 years, rather than
  permanently as was the standard, is not sufficient for Rule 32 petitions. Members
  suggested: 3-5 years after the appeal is perfected, otherwise 20 years.
- Members also suggested that schedule be sent to the Arizona Attorneys for Criminal Justice and Arizona Prosecuting Attorneys Advisory Council for review and comment.

Dr. Melanie Sturgeon, Director of the State Archives, indicated the importance of record retention sampling.

#### ACCESS TO UNSERVED ORDER INFORMATION IN CPOR

At the committee's last meeting, the members approved the proposal to enable Holders of Record to supplement electronic data in Law Enforcement Protective Order Repository (LPOR). Mr. Robert Roll and Ms. Konnie Young presented additional updates to the CPOR/LPOR process since the committee's approval. Mr. Roll presented the proposal approved by the Committee on the Impact of Domestic Violence and the Courts to enable Holders of Record to access unserved protective orders from LPOR.

MOTION: Ms. Lundin moved to approve the proposal as presented. Seconded. Passed unanimously. COSC-03-022

At this point the members took a 10 minute break.

#### JUDGES CONNECTING WITH CLASSROOMS

Ms. Sue Latzko demonstrated the speaking materials on the Arizona Judicial System for judges (and other court personnel) to use in classrooms and related venues. The materials are divided into Elementary, Middle and High School packets and include content information, speaking outlines, lesson plans, activities, resources and overheads. These materials are available for local county training coordinators, the Education Resources Library and from the Distance Learning Unit of the Administrative Office of the Courts, Education Services Division.

Members made laudatory comments.

#### **RULE 123 REVISION**

Mr. Greg Eades discussed A.R.S. § 13-2813, which makes it a Class 1 Misdemeanor to knowingly disclose "the fact that an indictment, information or complaint has been . . . filed before the accused person is in custody or has been served with a summons." The question has arisen whether court web sites violate the provisions of this statute by offering information on some misdemeanors and felonies prematurely. Similarly, automated case management systems may not alert court staff to the status of a criminal charge, resulting in premature information being provided to customers over the courter. A rule change petition to Rule 123 that clarified the statute only applied only felony cases, not misdemeanor cases, was considered. The Maricopa County Attorney's Office feels the statute is clear and applies to felony and misdemeanor cases.

A workgroup that includes county attorneys and prosecutors will be established to further examine this issue. Ms. Jennifer Greene asked for a volunteer from the committee for the workgroup. Hon. Michael Jeanes offered a representative from his office.

#### MINUTE ENTRY REFORM UPDATE

Hon. Fred Newton updated the members on the status of proposed rule regarding minute entry reform emphasizing that he would vigorously support the proposed rule approved by this committee when it is presented at AJC in December. The recently filed comment to the proposed rule from Judge Colin Campbell, brought to the meeting by a member, was discussed and copies distributed (after the meeting). Judge Newton expressed a willingness to work with Judge Campbell/Maricopa County to make any needed changes that are consistent with the rule to assure them that it will work well for them.

## **MEETING DATES FOR 2004**

Ms. Susan Pickard presented the membership with three tentative meeting dates for 2004.

- Friday, February 13, 2004 Judicial Education Center, Turquoise and Silver Conference Rooms
- Thursday, September 23 Conference Rooms 119A/B
- Friday, November 19 Conference Rooms 345 A/B

#### **NEXT MEETING**

February 13, 2004 Judicial Education Center 541 E. Van Buren, Suite B Silver & Turquoise Rooms

## GOOD OF THE ORDER/CALL TO THE PUBLIC

None made.

The meeting adjourned at 1:05 p.m.

Respectfully submitted,

Susan Pickard